## REMARKS

The following remarks are prepared in response to the Final Office Action mailed on November 12, 2008. Claims 1, 2, 4-8, 10-24, 26, 27, and 30 remain in this application.

**35 U.S.C. § 103**

The Examiner rejected Claims 1, 2, 4-8, 10-27, and 30 under 35 U.S.C. § 103(a) as being unpatentable over *O'Neill* (U.S. Pat. No. 3,731,319).

**Independent Claim 1**

*O'Neill* does not teach or suggest "the dart being formed by joining edges of the second panel together without creating a fold within the second panel." In *O'Neill*, leg portion 13 is attached to an additional leg portion by a seam. However the seam joining leg portion 13 to the additional leg portion is not the dart of the present invention because it joins two different panels together instead of edges of a single panel together. For the same reasons, the seam joining leg portion 15 to its respective additional leg portion is not the dart of the present invention. Furthermore, the seam joining the leg portions 13 and 15 to the crotch portion joins three panels together instead of edges from a single panel. In addition, there is no indication in *O'Neill* that the seams are formed without creating a fold in each of the panels.

*O'Neill* also does not teach or suggest "a first panel of fabric having a torso section which is shaped to substantially surround a waist region of a wearer's body and which has upper portions configured to extend outwardly in a finished garment to both underarm regions of the body such that no seams are present within both armpit regions of the body." In *O'Neill*, leg portions 13 and 15 cover the underarm section and are two different panels instead of only a single panel. Individually, leg portions 13 and 15 do not teach the features of the present invention. Leg portion

13 by itself does not "cover both underarm regions of the body." Likewise leg portion 15 by itself does not "cover both underarm regions of the body."

*O'Neill* also does not teach or suggest "the sleeve having a bend at an elbow region thereof such that a forearm section of the sleeve forms an angle to an upper arm section of the sleeve, and wherein the bend is provided in part by a dart which in the finished garment begins at a seam located at an upper rear side of the upper arm section and terminates adjacent the elbow region." (Emphasis added.) Leg portions 13 and 15 are not the second panel since it does not cover the forearm region. Furthermore, body portion 11, arm portion 7, and arm portion 9 are also not the second panel. Body portion 11 does not include a bend which is provided by a dart beginning at a seam located at an upper rear side of the upper arm section and terminates adjacent the elbow region. As seen in FIG. 1 of *O'Neill*, the only possible bend is a seam connecting body portion 11 to arm portion 7 or a seam connecting body portion 11 to arm portion 9. However, in *O'Neill*, the seam is circular around the same arm section and does not transverse the arm from an upper arm section to the elbow region. Likewise, arm portion 7 and arm portion 9 does not include the bend disclosed in the claim language. In addition arm portion 7 and arm portion 9 do not include "a first upper back section" which is specifically recited in claim 1.

Furthermore, it would not have been obvious to a person having ordinary skill in the art of garment production "to use various garment pattern pieces, that result in various panel and seaming locations for the finished garment to produce a garment that reduces direct strain on the seams." See Page 4, Office Action. Applicant submits that for the over 35 references disclosed and considered in PTO-892, none of the references in singularity or in combination provide the panel location and seaming arrangements of the present invention. As noted in MPEP § 716.01(a), "failure of others" is a factor for finding in favor of unobviousness.

By contrast, in *O'Neill*, multiple separate panels are provided to increase comfort. The use of multiple separate panels instead of a singular panel allow for more curved seams. Curved seams provide a greater elongation and flexibility than a straight seam. (Col. 1, lns. 64-68.) For example, the use of three separate panels, leg portion 13, leg portion 15, body portion 11, curved seam 14 can be curved and elongated, allowing for more elongation and flexibility.

The present invention uses a reduced amount of panel numbers and a reduced seam length. The reduced amount of panel numbers and seam length will generally keep a user warmer, more comfortable, and more flexible than existing wetsuits. (Pg. 4.) Thus, the present invention omits excess panels and seam length while retaining the function of *O'Neill*, which is greater flexibility. MPEP § 2144.04(II)(B) provides that omission of an element while retaining the functionality of the element supports a finding of unobviousness.

Furthermore, Applicant submits that *O'Neill* teaches away from the present invention.

> "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley,* 27 F.3d 551, 553 (Fed. Cir. 1994); *see KSR*, 127 S. Ct. at 1739-40 (explaining that when the prior art teaches away from a combination, that combination is more likely to be nonobvious). Additionally, a reference may teach away from a use when that use would render the result inoperable. *McGinley v. Franklin Sports, Inc.,* 262 F.3d 1339, 1354 (Fed. Cir. 2001).

*In re Icon Health and Fitness, Inc.* 2007 U.S. App. Lexis 18244, *10 (Fed. Cir. 2007). (Emphasis added.) While *O'Neill* discloses varied seam lengths, *O'Neill* teaches the desirability of longer seams. (Col. 1, lns. 64-68.) By contrast, the present invention teaches that a reduced amount of panel numbers and seam lengths keep a user warmer, more comfortable, and more flexible than existing wetsuits. Hence, *O'Neill* teaches away from the present invention by emphasizing longer seams as opposed to shorter seams.

Thus, Applicant respectfully requests that the rejection for Claim 1 and its Dependent Claims be withdrawn.

**Independent Claim 10**

*O'Neill* also does not teach or suggest "each leg section is made of a single panel of fabric and includes a dart which begins at a seam on an inner knee region of the body and terminates at an outside calf region, the dart being formed only from edges of the single panel of fabric." In *O'Neill*, the leg portions 13 and 15 are attached through seams to two additional leg portions (unlabelled) which cover the rest of the user's leg. Therefore, there is no teaching within O'Neill that each leg section is made of a single piece of fabric. As disclosed above, the use of the particular design claimed in the present invention including a reduced number of fabric panels is novel.

In addition, in FIG. 1, the inner knee seams connecting leg portions 13 and 15 to two additional leg portions (unlabelled) are not the darts of the present invention. The darts in the present invention are formed by joining edges of a single panel together. (Pg. 5.) While conventional darts in general may join two separate pieces of materials together, the darts in the present invention join edges of a single panel together. The claim language indicates that the dart is formed "only from edges of the single panel of fabric."

In addition, the seam recited by the Examiner is circular in nature and is at a relatively constant location on the legs. The seam does not begin "on an inner knee region of the body and terminates at an outside calf region." There is no indication that the seam is at an inner knee region or at an outside calf region. Furthermore, even if the seam were in either of the two locations, it would only be in one of the two locations and not the other since it does not traverse the leg in a vertical direction, but instead remains at a constant vertical height.

Thus, Applicant respectfully requests that the rejection for Claim 10 and its Dependent Claims be withdrawn.

**Independent Claim 18**

*O'Neill* does not teach or suggest "A fitted garment adapted to be worn on a wearer's torso and to cover at least the waist, both of the wearer's armpits, both of the wearer's legs including both of the wearer's ankles, and both of the wearer's arms including both of the wearer's forearms."

In *O'Neill*, 8 panels are required to cover "the waist, both of the wearer's armpits, both of the wearer's legs including both of the wearer's ankles, and both of the wearer's arms including both of the wearer's forearms" including at least

(1) arm portion 7,

(2) arm portion 9,

(3) body portion 11,

(4) leg portion 13,

(5) leg portion 15,

(6) additional leg portion connected to leg portion 13 (unlabelled),

(7) additional leg portion connected to leg portion 15 (unlabelled), and

(8) a crotch panel (unlabelled).

However, in the present invention, 7 panels or less are required to cover "the waist, both of the wearer's armpits, both of the wearer's legs including both of the wearer's ankles, and both of the wearer's arms including both of the wearer's forearms" such as:

(1) first panel 38,

(2) second panel 54,

(3) third panel 60,

(4) chest panel 66, and

(5) crotch panel 68.

(Pgs. 9-10; FIG. 2.)

*O'Neill* also does not teach or suggest "a single panel covers both of the wearer's armpits, both of the wearer's legs including both of the wearer's ankles, and at least portions of the wearer's arm and waist." As seen in FIG. 1, *O'Neill* uses 4 panels, leg portion 13, leg portion 15, additional leg portion connected to leg portion 13, and additional leg portion connected to leg portion 15 instead of a single panel to cover both of the wearer's armpits and both of the wearer's legs, including both of the wearer's ankles.

Thus, Applicant respectfully requests that the rejection for Claim 18 and its Dependent Claims be withdrawn.

**Independent Claim 20**

*O'Neill* does not teach or suggest "wherein the bend is provided in part by a dart which in the finished garment begins at a seam located at an upper rear side of the upper arm section and terminates adjacent the elbow region." As previously noted, the seams in *O'Neill* connecting arm portion 7 to body portion 11 and arm portion 9 to body portion 11 do not run from the upper rear side of the upper arm section to the elbow region.

*O'Neill* also does not teach or suggest "the dart being formed by joining edges of the second panel together without creating a fold within the second panel." Likewise, the seams joining arm portion 7 to body portion 11 and arm portion 9 to body portion 11 join at least two panels together and are not formed from the edges of a single panel nor are they created without folding the single panel.

*O'Neill* also does not teach or suggest "the seams having a total length of less than 32 feet." The reduction of seam length is not merely a change in size/proportion. A change in size is obvious when the prior art process is "capable of being scaled up." MPEP 2144.04(IV)(A) (citing *In re Rinehart*, 531 F.2d 1048, 1053, 189 USPQ 143, 148 (CCPA 1976)). Here, there is no indication that *O'Neill* is able to reduce the seam length given the number of panels it uses. Thus, *O'Neill* may not be capable of reducing its total seam length to less than 32 feet.

Furthermore, MPEP 2144.04(IV)(A) only notes that the changes in the dimensions are obvious when "a device having the claimed relative dimensions would not perform differently than the prior art device." Here, the present invention performs differently as the reduction in seams adds to the comfort and flexibility of the user.

Thus, Applicant respectfully requests that the rejection for Claim 20 and its Dependent Claims be withdrawn.

**Independent Claim 24**

Applicant cancelled Dependent Claim 25 and incorporated the limitations of Claim 25 into Claim 24.

*O'Neill* does not teach or suggest "wherein the total number of panels used to form the torso portion of the suit, excluding any dedicated neck panels, is 3." *O'Neill* uses at least 4 panels to form the torso portion of the suit excluding any dedicated neck panels including at least:

(1) body portion 11,

(2) leg portion 13,

(3) leg portion 15, and

(4) a crotch panel (unlabelled).

In contrast, in the present invention, 3 panels are used to form the torso portion of the suit, excluding any dedicated neck panels:

(1) torso section 40,

(2) chest section 66, and

(3) crotch panel 68.

(Pgs. 10-11; FIG. 5.)

Thus, Applicant respectfully requests that the rejection for Claim 24 be withdrawn.

**Independent Claim 26**

*O'Neill* also does not teach or suggest "forming a dart which begins at a seam located at an upper rear side of the upper arm section of the sleeve and terminates adjacent an elbow region of the sleeve by joining edges of the second panel together without creating a fold within the second panel." As noted above, the suit in *O'Neill* does not include the dart of the present invention. The seams joining arm portion 7 or arm portion 9 to body section 11 does not traverse an upper arm section of the sleeve to an area adjacent an elbow region of the sleeve. (FIG. 1.) Furthermore, there is no indication in *O'Neill* that the seams should be formed by joining the edges of the second panel together without creating a fold within the second panel.

The use of darts advantageously reduces an amount of panels and seams used in the present invention. This improves the quality of the wetsuits and reduces production costs of the wetsuits. (Pgs. 3-4.)

Thus, Applicant respectfully requests that the rejection for Claim 26 and its Dependent Claims be withdrawn.

**Independent Claim 30**

*O'Neill* does not teach or suggest "forming a dart on each arm section beginning at a seam located at an upper rear side of the upper arm section of the sleeve and terminating adjacent an elbow region of the sleeve by joining edges of the second panel together without creating a fold within the second panel." The suit in *O'Neill* does not include the dart of the present invention. The seams joining arm portion 7 or arm portion 9 to body section 11 does not traverse an upper arm section of the sleeve to an area adjacent an elbow region of the sleeve. (FIG. 1.) Also, *O'Neill* does not teach that the seams should be formed by joining the edges of the second panel together without creating a fold within the second panel.

As previously noted, the present invention uses darts which can have production advantages such as reducing costs of the wetsuits while improving the quality of the wetsuits. (Pgs. 3-4.)

Thus, Applicant respectfully requests that the rejection for Claim 30 and its Dependent Claims be withdrawn.

**Dependent Claims**

Dependent Claims 2, 4-8, 11, 12, 14-17, 19-22, 27, and 31 depend from and further define Independent Claims 1, 10, 13, 18, and 26 and are thus allowable, too.

## CONCLUSION

The application is deemed to be in condition for allowance and an expedited notice to this effect is respectfully requested.

If there are any questions with regards to this response, or if the Examiner believes that a telephone interview will help further prosecution of the application, the Examiner is invited to contact the undersigned at the listed telephone number.

Very truly yours,

**SNELL & WILMER L.L.P.**

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